

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

BRANDON TINGEY,  
*Plaintiff,*

vs.

CITY OF SUGAR LAND, TEXAS  
*Defendant.*

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CIVIL ACTION H-07-2391

**ORDER**

This case is before the court on defendant City of Sugar Land's motion to compel (Dkt. 33). Having considered the parties' submissions, the record, and the law, the court concludes that the City's motion should be granted, but no sanctions will be awarded.

Tingey has sued the City of Sugar Land for disability discrimination alleging he was terminated solely because he is a diabetic. Tingey's complaint prays for recovery of attorneys' fees. The City seeks production of Tingey's attorney fee agreement with counsel.

Tingey argues that fee discovery should await a determination on the merits. Because fees are a matter of costs, Tingey argues, the fee agreement is not relevant to any *claim* in the lawsuit. The City contends that the fee agreement is relevant to the City's assessment of the reasonableness of Tingey's fees under the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974). The City also contends that the fee agreement will shed light on when Tingey hired counsel, possibly showing that Tingey was laying a foundation for a lawsuit while still employed by the City, prior to any adverse employment action being taken against him.

Whether fees are a matter of damages, or a matter of costs, Tingey clearly seeks recovery of his fees and the City is entitled to some discovery on the issue. While the fee agreement itself is not determinative of a fee award, it may well be relevant to the issue.<sup>1</sup> Moreover, the City has explained that the agreement may lead to admissible evidence regarding the timing of Tingey's initial consultation with lawyers.

Tingey argues that it is inefficient to conduct fee discovery before knowing whether he has prevailed on his claims, but such is always the case with damages and yet damages discovery is rarely bifurcated from the merits. It is true that fee discovery should not result in a distracting second major litigation. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). The current dispute hardly sinks to that level, however. The City's motion to compel seeks, and this Order addresses, only production of the fee agreement, a discrete document that

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<sup>1</sup> Tingey cites *Miller v. Kenworth of Dothan, Inc.*, 117 F. Supp. 2d 1247 (M.D. Ala. 2000) for the proposition that "the absence in the record of the fee agreement is not an impediment to the court's ability to establish a reasonable attorney's fee." But it does not follow that a fee agreement is irrelevant to the determination of a reasonable attorney's fee. In fact, *Miller* relies in part upon *Blanchard v. Bergeron*, 489 U.S. 87, 93 (1989), in which the Supreme Court explained:

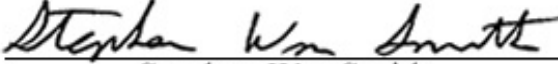
The *Johnson* contingency-fee factor is simply that, a factor. The presence of a pre-existing fee agreement may aid in determining reasonableness. 'The fee quoted to the client or the percentage of the recovery agreed to is helpful in demonstrating attorney's fee expectations when he accepted the case.' But as we see it, a contingent-fee contract does not impose an automatic ceiling on an award of attorney's fees, and to hold otherwise would be inconsistent with the statute [42 U.S.C. § 1988] and its policy and purpose.

117 F. Supp. 2d at 1264 (internal citations omitted).

Tingey referred to in his deposition.<sup>2</sup> Further discovery (if any) into the parties' respective fee arrangements need not descend the slippery slope into the abyss of unrestrained legal combat. Counsel for both sides have a mutual incentive, as well as a professional obligation, to conduct discovery in a manner which avoids imposing unnecessary expense and burdens on the other side. The court will not hesitate to step in if future discovery along this line gets out of hand.

It is therefore ordered that the City's motion to compel (Dkt. 33) is granted. Tingey is ordered to produce his fee agreement with counsel within 5 business days of the date of this Order. The City's request for sanctions is denied at this time.

Signed at Houston, Texas on December 14, 2007.

  
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Stephen Wm Smith  
United States Magistrate Judge

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<sup>2</sup> Tingey Dep. at 230, defendant's exhibit L (Dkt. 37).